



LONDON N. BREED
MAYOR

CITY AND COUNTY OF SAN FRANCISCO
POLICE DEPARTMENT
HEADQUARTERS
1245 3RD Street
San Francisco, California 94158



WILLIAM SCOTT
CHIEF OF POLICE

January 31, 2019

Lisa Fernandez
2 Jack London Square
Oakland, CA 94607

RE: Public Records Request, dated January 21, 2019, Reference # P006626-012119

Dear Lisa Fernandez:

The San Francisco Police Department (SFPD) received your Public Records Act request, dated January 21, 2019.

You requested:

"1. The names and reports of officers involved in police or deputy misconduct and covered under SB 1421. We are seeking records that date back to Jan. 1, 2017 in our initial request. We would like a prompt return of these records, as required by law. Please include video related to the incident. 2. As this process can be time-consuming, the second part of our request is asking for records going back to Jan. 1, 2014. We request that "Part 2" of our request be made public considering time restraints. Please include related video. 3. In addition, please provide how many complaints from the public about police misconduct regarding the items covered in SB 1421 you have gotten in this time period. (Back to Jan. 1, 2017 first, and then back to Jan. 1, 2014) 4. How many department-initiated internal affairs investigations regarding items covered in SB 1421 have you conducted in this time period? 5. How many claims and lawsuits have you received and settled regarding the items covered in SB 1421 in the same time period? KTVU is asking for Part 1 of our request as soon as possible. We are seeking: (A) A record relating to the report, investigation, or findings of any of the following: (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer. (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury. (B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public. (ii) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault. (iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency. (C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or

directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence..."

SFPD will, of course, respond to your request in compliance with the law. But, as explained below, we will face time constraints in doing so.

Prior to January 1, 2019, California Penal Code Section 832.7 protected from public disclosure peace officer personnel records and the information in those records subject to certain narrow exceptions. But on September 30, 2018, Governor Brown signed into law SB 1421, which, effective January 1, 2019, amended Section 832.7 to create additional exceptions to the confidentiality for peace officer personnel records, thus making available to the public a broad range of records that previously could not be disclosed. These new exceptions relate to specific incidents or determinations, allowing for the public release of:

- the report, investigation, or findings regarding an officer's discharge of a firearm at a person;
- the report, investigation, or findings regarding an officer's use of force that results in death or great bodily injury;
- a sustained finding that an officer engaged in sexual assault involving a member of the public; and
- a sustained finding that an officer was dishonest directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer. (See Penal Code § 832.7(b)(1)(A)-(C).)

SFPD has received a number of requests for previously confidential peace officer records made public as a result of the passage of SB 1421. Despite our best efforts to respond promptly, a backlog has quickly developed and will remain for some time.

SFPD must balance its duty to respond to public records requests with its duty to perform the broad range of tasks performed by SFPD personnel that result in keeping the peace and maintaining safety in our communities. Responding to your request will be quite burdensome and time-consuming, especially when coupled with our duty also to respond to like public records requests from others. SFPD will not be able to respond within the customary time frame without unreasonably impinging on its ability to perform its other duties.

It is in this rare circumstance that we find it necessary to invoke a rule of reason to guide the timing of our response to your public records request. As the City Attorney has stated on pages 97-98 of the *Good Government Guide*, which is available on the City Attorney's website, the law recognizes that when there is a conflict between a department's performance of its wide range of duties, and its responsibilities under public records laws, reason demands flexibility in the timing of responses to requests. Under this rule and given the SFPD's other public obligations, we will not be able to devote an unlimited amount of staff time to your request and like requests.

Nevertheless we intend to provide a complete response to your request, but it will take longer than ordinarily is the case.

Over time, we expect this backlog problem to recede, and expect to be able to move more quickly on requests such as yours, particularly if the records being sought have already been reviewed in order to respond to an earlier request. But we are not there yet. For now, we intend to provide records in response to your request, and other like requests, on a rolling basis. We will provide you with a brief update by February 15, 2019.

Please let me know if you have any questions pertaining to this letter, or any suggestions you might have that could expedite our response to your request.

If you have any questions, please contact Ofc. Jose Mora at 415-575-6700.

Sincerely,

Lt. Kathryn Waaland

Lieutenant Kathryn Waaland
Officer in Charge
Legal Division